UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EIGHT MILE STYLE, LLC and
MARTIN AFFILIATED, LLC,

Plaintiffs

vs.

APPLE COMPUTER, INC. and
AFTERMATH RECORDS d/b/a
AFTERMATH ENTERTAINMENT,

Defendants.

_________________________________/

Case No. 2:07-CV-13164
Honorable Anna Diggs Taylor
Magistrate Judge Donald A. Scheer

STIPULATION AND ORDER REGARDING PRE-TRIAL SCHEDULE AND REMAINING DEPOSITIONS

At a session of said Court, held in the Federal
Courthouse in the City of Detroit, County of
Wayne, State of Michigan, on this August 11, 2009

Present: Honorable Anna Diggs Taylor
United States District Judge

Upon noting the stipulation of the parties below, IT IS HEREBY ORDERED that:

(1) The final pretrial conference shall take place on a date on **Thursday, September 10, 2009 10:00 a.m.**

(2) The final settlement conference set for August 6, 2009 is taken off calendar in light of the parties' July 31, 2009 scheduled mediation with the Ninth Circuit Mediation Program. The parties shall inform the Court in the Final Joint Pretrial Order whether any additional settlement conference should be scheduled in this matter.

Dockets.Justia.com

(3) The date for Plaintiffs to serve a supplemental expert report, if any, in response to the deposition of Defendants' 30(b)(6) designee concerning financial documents disclosed by Aftermath, is August 10, 2009.

(4) Plaintiffs' damages expert, Mr. Gary Cohen, will be deposed during the week of August 10, 2009, and Plaintiffs will make their 30(b)(6) representative, Mr. Joel Martin, available for a deposition at the same time.

(5) Defendants shall have one week from the deposition of Mr. Cohen to serve an expert rebuttal disclosure, if any. Thereafter, Plaintiffs will have the opportunity to depose any expert identified in such a disclosure at a mutually agreeable date.

(6) The date for completing the depositions of the Third Parties (defined in the parties' stipulation below) shall be August 28, 2009.

(7) The parties shall exchange documents and information relating to the Joint Final Pretrial Order according to the following schedule:

a. Witness lists exchanged by August 10, 2009;

b. Exhibit lists exchanged by August 21, 2009;

c. Other information required for the Joint Final Pretrial Order by August 28, 2009.

(8) The parties shall file with the Court on the date of the Pretrial Conference as part of their Joint Final Pretrial Order the deposition designations and objections required to be disclosed under Federal Rule of Civil Procedure 26(a)(3)(A)(ii). To accomplish that, the parties shall exchange designations according to the following schedule:

a. Initial deposition designations on August 17, 2009;

b. Deposition counter-designations and objections to designations on August 24, 2009;

c. Any objections to deposition counter-designations on August 28, 2009.

(9) If the Final Pretrial Conference is scheduled for a date after September 3, 2009, the parties shall confer concerning the dates listed above in paragraphs (7) and (8) and may agree to revise the dates for the exchange of documents and information among the parties listed therein without involving the Court, provided that all information and documents are exchanged such that the Joint Final Pretrial Order is submitted on the day of the Final Pretrial Conference.

(10) If any deposition is conducted on such a date that the transcripts cannot be included within the filing of deposition designations in connection with the Joint Final Pretrial Order, then any designation of those depositions and objections thereto shall be prepared and submitted as soon as practicable after any deposition is completed.

DATED: August 11, 2009

s/ Anna Diggs Taylor
ANNA DIGGS TAYLOR
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order was served upon counsel of record via the Court's ECF System to their respective email addresses or First Class U.S. mail disclosed on the Notice of Electronic Filing on August 11, 2009.

s/Johnetta M. Curry-Williams
Case Manager

STIPULATION OF THE PARTIES

WHEREAS, by Order entered June 22, 2009 (Docket No. 123), the Court set a Bench Trial in this matter for September 22, 2009, at 9:00 A.M. before United States District Judge Anna Diggs Taylor, set the Final Pretrial Conference and Settlement Conference for August 6, 2009, at 9:30 A.M., and set other discovery deadlines including for depositions of certain third parties and for ongoing damages discovery, according to the stipulation of the parties; and

WHEREAS, *F.B.T. Productions v. Aftermath*, Case No. 07-cv-3314 (C.D. Cal.), Case Nos. 09-55817 and 09-56069 (9th Cir.), a case brought in the Central District of California that has been discussed in the pleadings in this case before, involves the same recording contracts and wherein the plaintiffs are owned and managed by the same individuals as the plaintiffs in the current case, some of the defendants are identical in the two cases, and plaintiffs and defendants are represented by the same counsel in the two cases. The parties conducted some discovery jointly between this case and the *F.B.T.* case, including scheduling depositions and document production, and counsel throughout have worked to schedule events on mutually agreeable dates to reduce excess travel and avoid duplicative effort in general. The *F.B.T.* case is now on appeal before the Ninth Circuit, which has ordered an in-person mediation through the Court's mediation program. The parties in the *F.B.T.* case and the instant case have agreed to conduct a mediation covering all issues in both cases and scheduled said mediation to take place on July 31, 2009; and

WHEREAS, in their stipulation and agreed order entered by the Court on June 22, 2009 the parties did not request any change of the date for the Final Pretrial Conference. At that time, the parties were unable to agree on an alternative date due to the settlement conference the Court scheduled to take place on the same day. Since a mediation including all the claims in this case will take place on July 31, 2009, a separate settlement conference covering only this case would be redundant and unnecessary; and

WHEREAS, counsel for the parties have inquired of the Court's availability for a Final Pretrial Conference on September 1, 2009, and have been informed by the Court's staff that Court may or may not be available to conduct the Conference on September 3, 2009, and the parties have conferred and are all available for a Final Pretrial Conference on September 3, 2009; and

WHEREAS, the parties have been working jointly to schedule the deposition of Defendants' 30(b)(6) representative concerning financial documents produced by Aftermath, and a deposition of Plaintiffs' expert witness on damages. Defendants' representative was deposed on Monday, July 27, 2009. The parties have agreed that Plaintiffs' supplemental expert report, if any, is due two weeks, from that date, August 10, 2009. Plaintiffs' expert witness on damages can then be deposed sometime during the week of August 10. Plaintiffs have agreed to make their 30(b)(6) witness, Mr. Joel Martin, available for a deposition at the same time in New York. These dates are acceptable to the parties and represent the earliest possible dates that these depositions can be conducted while minimizing travel costs to the parties and the witnesses; and

WHEREAS, the parties have also continued to discuss the potential depositions of certain third parties, including the Harry Fox Agency, Kobalt Music Publishing America, Ensign Music Corp. (Sony/ATV), Music Resources, Inc., and Universal Music Publishing/Rondor Music Int'l (the "Third Parties"). Plaintiffs and Defendants have reserved their rights to call some of these Third Parties at trial, but may conclude that some or all of these Third Parties will not be called at trial. The parties have agreed that any depositions of the Third Parties may take place at mutually convenient dates up to and including August 28, 2009; and

WHEREAS, the parties have discussed and agreed on a schedule for the exchange of certain information necessary to prepare the Joint Final Pretrial Order, as follows: witness lists shall be exchanged by August 10, 2009; exhibit lists shall be exchanged by August 21, 2009; and remaining Joint Final Pretrial Order sections shall be exchanged by August 28, 2009. However, the parties have also agreed that deposition designations, counter-designations, and all objections may be exchanged after the Final Pretrial Conference on the following dates: initial deposition designations by August 17, 2009; counter-designations and objections on August 24, 2009; and any objections to counter-designations by Friday, August 28. The deposition designations and any objections would then be filed with the Court as part of the Joint Final Pretrial Order on the day of the Final Pretrial Conference scheduled by the Court. In the event the Final Pretrial Conference takes place after September 3, 2009, counsel have agreed to confer concerning the above dates listed in this paragraph and may agree to modifications thereof provided that all information and documents are exchanged such that the Joint Final Pretrial Order is filed on the date of the Final Pretrial Conference.

WHEREAS, the parties would not request a modification to the date and time for trial;

NOW THEREFORE, IT IS HEREBY STIPULATED BY AND AMONG THE PARTIES HERETO AND THEIR COUNSEL OF RECORD THAT

(1) The parties agree to postponing the Final Pretrial Conference to take place on a date on or after September 3, 2009, as set by the Court.

(2) The parties jointly request that the Court take the final settlement conference set for August 6, 2009 off calendar in light of the parties' July 31, 2009 scheduled mediation with the Ninth Circuit Mediation Program. The parties shall inform the Court in the Final Joint Pretrial Order whether any additional settlement conference should be scheduled in this matter.

(3) Plaintiffs' supplemental expert report, if any, shall be served on Defendants no later than August 10, 2009. Plaintiffs' damages expert shall be deposed during the week beginning August 10, 2009, and Plaintiffs will make their 30(b)(6) witness, Mr. Martin, available in New York for a deposition at the same time. Defendants shall serve their rebuttal expert disclosure, if any, within one week of their deposition of Plaintiffs' damages expert, after which

time the parties will work to schedule a deposition at a mutually convenient date of any individual indentified in such disclosure.

(4) The parties will continue to meet and confer concerning the necessity of depositions of the Third Parties. The last date for depositions of the Third Parties shall be August 28, 2009.

(5) The parties have agreed to the following procedure regarding the exchange of information necessary to prepare the Joint Final Pretrial Order:

a. Witness lists shall be exchanged by August 10, 2009;

b. Exhibit lists shall be exchanged by August 21, 2009;

c. Remaining Joint Final Pretrial Order sections shall be exchanged by August 28, 2009;

d. Initial deposition designations will be exchanged on August 17, 2009;

e. Deposition counter-designations and objections to designations will be exchanged on August 24, 2009;

f. Any objections to deposition counter-designations will be exchanged on August 28, 2009.

(6) If the Final Pretrial Conference is scheduled to occur after September 3, 2009, the parties will confer concerning the dates listed above in the immediately preceding paragraph and its subparagraphs, and may alter those dates upon mutual agreement provided that the documents and information therein are exchanged such that the Joint Final Pretrial Order is filed on the date of the Final Pretrial Conference.

(7) If any deposition is conducted on such a date that the transcripts cannot be included within the filing of deposition designations in the Joint Final Pretrial Order, the parties agree to work together expeditiously to complete any designations of those depositions promptly

so that they may be submitted as soon as practicable to the Court after any deposition is completed.

/s/ Howard Hertz
Howard Hertz (P26653)
Hertz Schram PC
1760 South Telegraph Road, #300
Bloomfield Hills, MI 48302
(248) 335-5000
hhertz@hertzschram.com
Attorneys for Plaintiffs

Richard S. Busch (TN BPR#14594)
King & Ballow
1100 Union Street Plaza
315 Union Street
Nashville, TN 37201
(615) 259-3456
rbusch@kingballow.com
Attorneys for Plaintiffs

/s/ Daniel D. Quick w/authority
Daniel D. Quick (P48109)
Dickinson Wright PLLC
38525 Woodward Avenue
Suite 2000
Bloomfield Hills, MI 48304
(248) 433-7200
dquick@dickinsonwright.com
Attorneys for Defendants

Kelly M. Klaus
Munger, Tolles & Olson LLP
355 South Grand Avenue
Suite 3500
Los Angeles, CA 90071-1560
(213) 683-9238
kelly.klaus@mto.com
Attorneys for Defendants